IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.716 OF 2006

Sunil Vasantrao Jadhav & ors — Petitioners (Orig.Defts)

Vs

Nitin Shantilal Rathod, — Respondent. (Orig.Plff)

Mr R.G.Ketkar, for the petitioners.
Mr Amit Borkar for the respondent.

CORAM : D.B.BHOSALE,J.
DATE : 18.10.2006

PC:

1. Heard the learned counsel for the parties. 2. The order dated 19.12.2005 passed by the court below allowing the application filed by the respondent-plaintiff seeking amendment of the plaint is under challenge in this writ petition under Article 227 of the Constitution of India. The amendment is challenged solely on the ground that in the face of the judgment of this Court in Shantilal Hukumchand Rathod Vs. Indirbai Marutrao Gatade, deceased by heirs, and ors in Second Appeal No.65 of 1989 the trial Court ought not to have allowed the application. I perused the order. The law is well settled in Rajesh Kumar Aggarwal and Ors vs K.K.Mody & ors, (2006) 4 CC 385 wherein the Supreme Court has held that while considering whether an application for amendment should be allowed, the Court is not expected to go into the correctness or falsity of

the case in the amendment.

Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. The contention of Mr Ketkar, learned counsel for the petitioner, that by way of amendment the respondents-plaintiffs cannot claim that the property belongs to the joint family in view of the aforesaid judgment of this court dated 14.10.1995 can be tested or examined during the course of hearing of the suit. I do not wish to express any opinion on merits of the case at this stage. It is always open for the defendants to file an additional written statement, if they so desire, raising all the contentions available in law after the amendment is carried out. In my opinion, the order does not suffer from any infirmity warranting interference by this court under Article 227 of the Constitution of India. Hence, the writ petition is rejected.

3. All contentions on merits are kept open. Liberty to the petitioners to file additional written statement, if they so desire, within six weeks from today. Hearing of the suit is expedited. While passing this order, I shall not be understood to have expressed any opinion on

the merits of the amendment.

(D.B.BHOSALE,J.)